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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

RICKEY WHITEHEAD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

WILLIAM J. SHEPPARD
ELIZABETH L. WHITE
SHEPPARD AND WHITE, P.A.
215 Washington Street
Jacksonville, Florida 32202
(904) 356-9661

ATTORNEYS FOR PETITIONER

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QUESTION PRESENTED FOR REVIEW

I.

WHETHER AN AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT BASED ON AN INFORMANT'S UNDATED OBSERVATION, WHICH FAILS TO PROVIDE FACTS INDICATING THAT THE ITEMS SOUGHT COULD BE FOUND AT THE TIME THE WARRANT ISSUED, IS SUFFICIENT TO ESTABLISH PROBABLE CAUSE.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Rickey Whitehead, by and through undersigned counsel, petitions this Court to issue its Writ of Certiorari to the Eleventh Circuit Court of Appeals.

CITATION TO OPINIONS BELOW

The opinion of the Eleventh Circuit Court of Appeals affirming the District Court's denial of the Motion to Suppress is unpublished, and is attached as Appendix A.

The District Court's denial of the Motion to Suppress was rendered in the course of the suppression hearing, and is unpublished. The transcript of the suppression hearing is attached as Appendix B.

JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals was entered on October 8, 1986, and the order on Petition for Rehearing and Rehearing En Banc was entered on November 13, 1986. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

Amendment IV of the Constitution of

the United States provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unnecessary searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On November 14, 1985, petitioner's home was searched pursuant to a warrant obtained and executed by officer Regina French of the Alachua County, Florida, Sheriff's Office. Officer French stated in the search warrant affidavit that a confidential source had been inside petitioner's home and seen what the source believed to be drug paraphernalia, a firearm, marijuana and traces of cocaine in open dresser drawers. The affidavit did not indicate when the informant had made these observations. Officer French assessed the informant's basis of knowledge solely from his description of the items

allegedly viewed. Officer French knew nothing of the source's reliability or veracity, and was given only his nickname.

Five days after her phone conversation with the confidential source, Officer French confirmed that utilities accounts for the house to be searched were listed in petitioner's name. The only other dated information in the affidavit noted petitioner's arrest two years previously for possession of marijuana. Finally, the affidavit noted that petitioner was the subject of an investigation by another police department across the state. The affidavit did not suggest that the investigation had led to suspicions of contraband in petitioner's home at the time the warrant issued.

Petitioner was indicted for four counts of unlawful possession of firearms, one count of possession with intent to distribute marijuana, and one count of possession with intent to distribute

cocaine. Prior to trial, petitioner filed three motions to suppress evidence seized from his home and automobile. The motions were denied following a suppression hearing. Appellant then entered into a plea agreement wherein he agreed to enter a guilty plea to counts one and six. Both the cocaine and the weapons, which formed the basis of counts one and six, were seized from petitioner's residence. Pursuant to the plea agreement, petitioner specifically reserved his right to appeal the denial of his motions to suppress. This agreement was accepted by the district court.

Petitioner filed a Notice of Appeal on April 8, 1986. After briefs were submitted but without setting the case for oral argument, a panel of the United States Court of Appeals for the Eleventh Circuit affirmed the district court's denial of petitioner's motions to suppress on October 8, 1986. Without acknowledging petitioner's argument that a staleness

analysis was required, and without reference to the undated informant's observations, the panel affirmed the District Court's summary finding that the warrant established probable cause under the totality of the circumstances. The Eleventh Circuit denied a Petition for Rehearing and Suggestion for Consideration En Banc on November 13, 1986.

ARGUMENT

I.

AN AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT BASED ON AN INFORMANT'S UNDATED OBSERVATION, WHICH FAILS TO PROVIDE FACTS INDICATING THAT THE ITEMS SOUGHT COULD BE FOUND AT THE TIME THE WARRANT ISSUED, IS INSUFFICIENT TO ESTABLISH PROBABLE CAUSE.

A. The Opinion Below Conflicts With Precedent of This Court, Other Federal Circuit Courts of Appeal, and Highest State Courts' Interpretation of Federal Law

The opinion below conflicts with relevant precedent in two distinct ways: by failing to analyze the search warrant affidavit for staleness, and by finding that a warrant based on undated informant observations established probable cause.

In summarily finding the search warrant affidavit established probable cause under Illinois v. Gates, 462 U.S. 43 (1983) and Massachusetts v. Upton, 466 U.S. 727 (1984), the Eleventh Circuit failed to analyze the affidavit to elicit facts

establishing that probable cause existed at the time the warrant issued. Such an analysis is required by Sgro v. United States, 287 U.S. 206 (1932).

Sgro held that a search warrant must contain "facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time. Whether the proof meets this test must be determined by the circumstances of each case." 287 U.S. at 210. In Sgro the Government's attempt to reissue a warrant which had exceeded the statutory time limit for execution violated the requirement that probable cause exist when the warrant issued. Since the commissioner "took no proof to show that probable cause then existed" the warrant was held invalid.

The magistrate in the instant case had no proof indicating that the items listed in the warrant would be found at petitioner's home on the date the warrant issued. Both the District Court and Court

of Appeals failed to offer any facts from the search warrant affidavit to support their finding of probable cause. Since the Eleventh Circuit ignored Sgro's mandate in the instant case and in the process created a conflict between the circuits, the instant petition should be granted. The need for review is further evidenced by the conflict created between precedent of the federal circuits and highest state courts, as well as the Eleventh Circuit's own precedent, by the panel's failure to conduct a staleness analysis.

The "staleness" doctrine emanating from Sgro has become a well-established tenet of search and seizure law in both federal and state courts. The Eleventh Circuit, for example, has consistently followed Sgro in demanding that "the government must reveal facts that make it likely that the items being sought are in that place when the search warrant issues." United States v. Domme, 753 F.2d 950, 953

(11th Cir. 1985). The Eleventh Circuit recognized Sgro's mandate that "staleness is an issue that courts must decide by evaluating the facts of a particular case." 753 F.2d at 953, citing United States v. Bascaro, 742 F.2d 1335 (11th Cir. 1984) (emphasis added). Accord United States v. Shomo, 786 F.2d 981 (10th Cir. 1986); Bastida v. Henderson, 487 F.2d 860 (5th Cir. 1974); State v. Tella, 321 A.2d 87 (R.I. 1974); State v. Austria, 524 P.2d 290 (Hawaii 1974).

The opinion below also conflicts with decisions of federal circuit courts and highest state courts addressing the issue of search warrants based on undated informant observations. Courts have consistently required that observations used to establish probable cause be dated where no date is inferred from other facts in the affidavit.

Since the staleness analysis required by Sgro is foreclosed where such dates are

lacking, most federal circuit courts have applied a per se rule rendering search warrants relying on informant observations facially invalid. See United States v. Button, 653 F.2d 319 (8th Cir. 1981); United States v. Boyd, 422 F.2d 791 (6th Cir. 1970); Rosencranz v. United States, 356 F.2d 310 (1st Cir. 1966); Poldo v. United States, 55 F.2d 866 (9th Cir. 1932); People v. Bauer, 552 P.2d 512 (Colo. 1976). The Tenth Circuit has validated such warrants only where a date can be unequivocally supplied to the informant's observation in the context of other facts in the affidavit. United States v. Miles, 772 F.2d 613 (10th Cir. 1985); accord State v. Tella, 321 A.2d 87 (R.I. 1974). The panel opinion below defies this precedent. The resulting conflict between the Eleventh Circuit, other federal circuit courts and state courts should be resolved to ensure uniformity in the definition of the constitutional requirements of probable cause.

B. This Petition Presents An Important Constitutional Issue Not Yet Addressed By This Court.

The issue presented involves the fundamental constitutional requirement of probable cause in the issuance of search warrants. The per se rule developed by the federal circuit courts of appeals rendering search warrants based on undated observations invalid illustrates the importance given this issue by the courts. In disposing of this important issue, the opinion below applied this Court's precedent in an inconsistent manner, thereby requiring this Court's review.

The panel opinion interprets the holdings of Illinois v. Gates, 462 U.S. 43 (1983) and Massachusetts v. Upton, 466 U.S. 727 (1984) effectively to overrule Sgro v. United States, 287 U.S. 206 (1932). The panel opinion misapplied both Gates and Upton. Neither case directly addressed the issue of undated informant's observations or the staleness doctrine; however, each

case inherently affirmed the requirement of timely information to establish probable cause.

Both cases depended upon the informants' predictions of future behavior, and police corroboration of the fulfillment of those predictions. The accurate predictions verified the informant's veracity and contributed to probable cause--verification lacking in the instant case. Since the affidavits were based on freshly corroborated information, Gates and Upton underscore Sgro's requirement that the Government prove facts sufficient to establish the timeliness of probable cause.

The panel opinion vitiates both opinions, and consequently the Fourth Amendment's application to governmental searches of private homes, by finding the warrant established probable cause in the totality of the circumstances without citing facts establishing timeliness. This petition should be granted to decide the

fundamental constitutional requirements at issue, and to review the Eleventh Circuit's application of this Court's recent decisions which effectively overrules prior precedent of this Court.

CONCLUSION

The opinion below conflicts with precedent of this Court, federal circuit courts of appeals, and highest state courts by failing to conduct a staleness analysis and in holding that a search warrant based on undated informant observations establishes probable cause. This petition should be granted to resolve these conflicts and to decide the fundamental constitutional issues of whether a search warrant relying on undated observations establishes probable cause where no date for the observations can be inferred.

Respectfully submitted,

Elizabeth L. White

SHEPPARD & WHITE, P.A.
215 Washington Street
Jacksonville, FL 32202
(904) 356-9661

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Ross A. Nabatoff, Esquire, United States Attorney, 227 North Bronough Street, Suite 4014, Tallahassee, Florida 32301; by mail, this _____ day of January, 1987.

Elizabeth L. White
ATTORNEY

86-1212

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SHEPPARD AND WHITE, P.A.
215 Washington Street
Jacksonville, Florida 32202
(904) 356-9661

ATTORNEYS FOR PETITIONER

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-3250
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

versus

RICKEY WHITEHEAD,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Florida

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(October 8, 1986)

Before GODBOLD, VANCE and JOHNSON, Circuit Judges.

PER CURIAM:

Appellant Rickey Whitehead was indicted in a six count indictment charging him with various firearms and narcotics offenses. His three motions, seeking to suppress evidence seized by the county officers from his residence, his automobile

and his person, were overruled.

Pursuant to a plea agreement Whitehead then pleaded guilty to one count of possession of a firearm by a convicted felon, 18 U.S.C., appendix II, § 1202(a)(1), and to one count of possession with intent to distribute cocaine, 21 U.S.C. § 841(a)(1), but reserved the right to appeal the district court's denial of his suppression motions.

In this court Whitehead challenges the validity of a search warrant, claiming that the affidavit in support of the warrant was insufficient to establish probable cause. He argues further that the search cannot be validated by the good faith exception to the exclusionary rule.

We have examined the challenged affidavit in light of the standards established in Illinois v. Gates, 462 U.S.

43 (1983) and Massachusetts v. Upton, 466 U.S. 727 (1984). We conclude that appellant has failed to demonstrate that the district court's denial of his motions to suppress constituted error. It therefore is not necessary that we reach appellant's second contention.

AFFIRMED.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,	)	CASE NO. GCR
PLAINTIFF,	)	-00031
VS	)	JANUARY 21,
RICKY WHITEHEAD,	)	1986
DEFENDANT.	)	GAINESVILLE, FLORIDA

MOTION TO SUPPRESS

BEFORE THE HONORABLE MAURICE M. PAUL

APPEARANCES:

FOR THE PLAINTIFF: LYNDIA BARRETT

ASSISTANT U.S.
ATTORNEY
227 NORTH BRONOUGH
STREET
TALLAHASSEE,
FLORIDA 32301

FOR THE DEFENDANT: WILLIAM SHEPPARD
ATTORNEY AT LAW
215 WASHINGTON ST.
JACKSONVILLE,
FLORIDA 33202

COURT REPORTER: R. DARLENE PINO,
CSR, RPR
TALLAHASSEE,
FLORIDA

TRANSCRIPT PRODUCED BY MECHANICAL
STENOGRAPHY

THE COURT: United States versus Ricky Whitehead. Are you all ready to proceed?

MR. SHEPPARD: Yes, Your Honor.

MS. BARRETT: Yes, Your Honor. Your Honor, for the purposes of the record, first I think I need to clarify a few things. I received, in my office, a defendant's motion to suppress evidence, a defendant's second motion to suppress evidence, and defendant's third motion to suppress evidence, and a notice of appearance on behalf of Mr. Sheppard. Those are the only documents that I received.

And today, my time to respond to those motions to suppress, according to the time I received those motions, would have been today. I filed a response on Friday. I mailed a copy to Mr. Sheppard, which I believe he probably received on Saturday. And he indicated to me earlier that he had my response. And I brought the original to file with the Court, knowing the Court was

in Gainesville.

Mr. Sheppard tells me he filed some other motions which I did not receive. We have discussed a motion to disclose the confidential informant, which I think was the only other motion he indicated was of any substance that he was really concerned about.

I do not know why I did not received those motions. I was just unaware that any other motion had been filed. I never received them in my office. They never came to my office that I'm aware of. I think he said he filed a discovery motion. I indicated, you know, I have the discovery. It's available. And he's welcome to see it at any time.

I did want to make that clear since I found out today that there are some other motions filed that I did not receive.

THE COURT: There are some routine discovery motions interspersed between the first, second and third motions to supress.

MS. BARRETT: For some reason, though, they were not in the copies I received.

THE COURT: Let's go ahead with our suppression hearing and, depending on that, we'll address these other motions if you all can't resolve them between yourselves.

MR. SHEPPARD: Your Honor, I'm satisfied with regard to -- if I can just list them for the record -- the motion for disclosure of mixed material, the motion for discovery, motion for disclosure of existence and substances of promises of immunity, et cetera, and a motion of disclosure of similar or extrinsic act evidence that that could be resolved by and between counsel and will not require the Court's attention.

With regard to the defendant's motion for disclosure of confidential informant, I have furnished access to my copy of that motion to the government; and, logically, that motion should be heard prior to the motions to suppress because it would have

impact on how they were handled.

I don't understand why the government didn't get them. They were sent at a different time and a different mailing than the three motions to suppress; and they were sent with all the discovery motions and were in the court file. And somehow the government didn't get copies. But I would ask the Court to allow us to be heard on our motion for disclosure of confidential informant.

MS. BARRETT: I have a copy of Mr. Sheppard's motion on that, Your Honor. And I think I can respond and resolve this motion very quickly. I have the confidential informant named in the search warrant here and available to testify if he is needed at the trial. He will be available to the defendant's attorney at that time. If we go to trial I intend to use him in the trial. So I really think that alleviates any need to have this motion heard.

I think it would be a valid motion if I did not intend to call him in the trial.

For the purposes of suppression hearing, of course we're here on the search warrant and the basis for that search warrant. And I don't think it's necessary at this time to disclose the identity of the confidential informant.

MR. SHEPPARD: Your Honor, I take issue with that, in that -- and the authorities relied on in our motion, or in our memorandum. Really, what we're asking for is the Court to either to disclose the identity of the confidential informant so that we can adequately prepare to urge the motion to suppress and, in the alternative, we've requested the Court to conduct an in camera proceeding to examine the informant.

And the basis of our position is, quite simply, that if you reviewed the search warrants for the Court's clarification, I'm sure the State will introduce them. There are two.

The first search warrant is for the residence of Mr. Whitehead; and, upon the execution of that warrant, an application was made for a second warrant for a vehicle belonging to Mr. Whitehead in which he was arrested. The probable cause for the second search warrant necessarily rises or falls on the legality of the first warrant.

With regard to the confidential informant matter, if you review, once the government introduces into evidence, the first search warrant which, I believe, is what the Court really needs to focus on, what you will find is a total absence of either the basis of knowledge of the informant, a total absence of any prior liability of the informant, and finally, and most devastating to the legality of the of the warrant is, that it does not set forth any time period in which the alleged observations by the informant were made.

And then finally, there is what I regard as a legal conclusion in the

warrant, that this confidential source made a -- quote -- "authorized entry" -- end quote -- into the dwelling of Mr. Whitehead.

It becomes critical to a legal analysis to know what this confidential informant is, and how was this entry into Mr. Whitehead's home a -- quote -- "authorized entry" -- end quote.

And under Roviera, the informant's privilege is that of the governments; and I rely and cite to the Court Illinois v Gaits for the two prongs of Agwillar and Spinelli. And I will respectfully submit what the Court has to do is do a balancing test as required by McRay v Illinois to determine whether or not Mr. Whitehead's right to prepare and investigate the grounds of his motion to suppress are overridden by the government's interest in paring out crime.

I would respectfully submit that that balancing test could best be conducted by

in camera inquiry by the Court of the informant to determine the legality of the entry by him and whether he's connected with law enforcement or had performed in that capacity before for law enforcement of going into people's homes.

MS. BARRETT: Your Honor, let me at this time for the purposes of this hearing --

(Handing document to counsel)

MS. BARRETT: I'm showing Mr. Sheppard certified copies of the affidavit search warrants from the State Court filed which I would like to introduce for the purposes of this hearing.

MR. SHEPPARD: May I approach with counsel so I can get the same markings on my document?

THE COURT: Yes.

(Counsel approaching bench)

MS. BARRETT: Your Honor, for purposes of this hearing, the application and affidavit for the search warrant on the

premises is marked "Government's Exhibit 1A." The search warrant issued on that application is "1B." The application and affidavit for search warrant on the car is "Government's Exhibit 2A," and the search warrant is "2B."

THE COURT: Thank you, ma'am.

MS. BARRETT: Your Honor, I don't think for purposes of this hearing that it makes -- that the Court needs to have in camera determination with the confidential informant because I'm sure Mr. Sheppard is going to argue that the search warrant has to rise and fall based on the affidavit in the search warrant. And I think at this point what really is relevant is what the police officer knew at the time and her good faith reliance on that information and why she relied on that information.

And I have the investigating officer, who was the affiant in this case here, prepared to testify. And she can tell the Court what the basis of her information was

and why the person was in the premises.

Even if it was not authorized entry, it really, I don't think, affects the search warrant in this case. I mean, we can argue about whether tenants have rights when it comes to their landlord entering their premises, but I don't think that's a determining issue in this case. The determining issue is an affidavit and search warrant and whether the Magistrate, based on all information provided in that affidavit, had probable cause to issue a search warrant.

And I do think that is -- that's mostly a legal argument and it doesn't have anything to do with the confidential informant at this point in time.

THE COURT: Anything further?

MR. SHEPPARD: Your Honor, respectfully, it's a balancing test. The Court can not balance anything in a vacuum. And I respectfully submit that one could never urge a Franks v Delaware, or reckless

disregard for the truth, motion to suppress in a Federal court if the government's position is correct.

The Supreme Court of the United States has clearly said that the Court has a duty to conduct a balancing test. I respectfully submit that no one can balance anything without an evidentiary record by which to balance it. And, in the cases, typically relief has been denied because defendants have not asked for any alternative prayer for an in camera examination by the Court.

My motion, on its face, asks either for disclosure so that I can conduct the proper investigation or either an in camera inspection by the Court so the Court can make the proper balance as required by the case law.

THE COURT: Miss Barrett, you say you're going to produce the -- or make known the informant in these proceedings? Did I understand you to say that?

MS. BARRETT: If the case goes to trial, I intend to call that person as a witness. I do not intend to call that person as a witness in the suppression hearing because I don't believe it's necessary. We're bound by the search warrant. We're bound by the officer's information. Unless Mr. Sheppard can show some bad faith here, then I don't think there is any need to get in to the confidential informant basis for their knowledge. It really is what the law enforcement officer -- the information that she possessed and the basis -- the reason she possessed that information and her conclusion is based on it, they are contained in the search warrant.

Under Illinois versus Gaits, we're no longer under the two-prong test any more. It's the totality of the circumstance and analysis. And I think that the affidavit on its face gives sufficient facts. And I also have the affiant here who would

testify about procedures used to secure the search warrant. She can be cross-examined by the defense counsel concerning her information and why or why she did not put certain information in and certainly in the motion to suppress. Hearsay information is admissible also.

THE COURT: Let's proceed on the motion to suppress these warrants without revelation at this time of the confidential source.

MS. BARRETT: The Government will call Regina French.

MR. SHEPPARD: Show that Mr. Whitehead would invoke the rule, please.

REGINIA FRENCH, DEFENDANT'S WITNESS, SWORN

DIRECT EXAMINATION

THE CLERK: State your full name and spell your last name.

WITNESS: Reginia French. F-R-E-N-C-H.

THE COURT: Do you have any people in

here?

MS. BARRETT: No, I do not have. The case agent is present in the courtroom as the agent for the government, and I do not expect to be able to be a witness at the trial. Other than that, we don't have any witnesses in the courtroom.

THE COURT: Does the defendant have any present?

MR. SHEPPARD: No, Your Honor.

THE COURT: Thank you. You may proceed.

DIRECT EXAMINATION

BY MS. BARRETT:

Q. Would you tell the Court how you're employed, please?

A. I'm a deputy sheriff with the Alachua County Sheriff's Department.

Q. In Alachua County?

A. Yes, ma'am.

Q. And how long have you been employed

with the Alachua County Sheriff's Department?

A. Six years.

Q. And prior to that, did you have any law enforcement experience?

A. No, I did not.

Q. What did you do prior to that?

A. I was a secretary for the State Attorney's office.

Q. What department do you work in with the Alachua County Sheriff's Department? What division?

A. I'm currently assigned as investigator with narcotics and organized crime unit.

Q. And how long have you been with the commonly called "narc unit" here in Gainesville?

A. Two years.

Q. Two years? And what do your duties consist of?

A. Investigation of narcotic violations.

Q. Has that been primarily your activities for the past two years?

A. Yes, it has.

Q. Now, did you have an opportunity to become involved in the investigation of an individual known as Ricky Whitehead?

A. Yes, I did.

Q. And how did you get involved in that investigation?

A. I first learned of Mr. Whitehead on October 23rd of 1985. I was contacted by Mr. Allen George, who gave me some information that neighbors had been complaining about vehicular and pedestrian traffic in and out of the residence located at 3224 Northwest 48th Place in Gainesville, Alachua County, Florida. He is the owner's agent for that residence.

Q. He's the owner's agent for that residence?

A. Yes, ma'am.

Q. Did you do anything about that information on that day?

A. On that day, I ran a utilities check to see who the utilities come back to; and

they come back to a subject by the name of Rick Whitehead. They were turned on May the 24th of 1985.

Q. Did you do anything else that day?

A. Not at that time.

Q. Did there come a later time when you received further information concerning Mr. Whitehead?

A. Yes. That was on November the 8th of 1985.

Q. And what happened on that day?

A. I was recontacted by a Mr. Allen George. He advised me he had a source that had been inside that residence and had seen what he believed to be some illegal narcotics and possibly an illegal gun.

Q. What did you do upon receiving that information?

A. I asked Mr. George if that source was there at that time; and he said, "Yes, he was," an put the source on the telephone with me.

Q. Did he tell you why the source was in

the residence?

A. He advised me he had been there doing a maintenance check.

Q. And did you talk with that -- quote -- "source" on that day?

A. Yes, I did.

Q. What did your conversations with him consist of?

A. I asked him if he was inside the residence; and he said, "Yes," he was. He had gone in to do a maintenance check as per Mr. Whitehead's lease agreement with Mr. George. While inside the residence, he walked into a bedroom. As he walked into the bedroom, he smelled what he believed to be "pot" was the term he used. He said there were some partially-opened dresser drawers. He saw about three to four pounds, what he believed to be pot in one of the drawers. He saw a large plastic baggy an several small plastic baggies with a white powder residue -- he believed to be cocaine. He saw some triple beam scales;

and he also saw what he believed to be a machine gun or Tommy gun.

At that time, I asked him how he determined that it was pot. He had seen pot in the past. He knew what it smelled like. He knew what it looked like. He had also seen cocaine in the past and knew what it looked like.

He kind of, with a chuckle, made a statement to the effect of: An average citizen doesn't have triple beam scales in their house.

I asked him about the gun. He believed it to be a machine gun or a Tommy gun. I asked him how he made that determination; and he said that he had a friend that was a gun collector and he had been in contact with him or about four years, and he was around firearms as a hobby.

Q. From his description, did you conclude that that gun would be a violation of State law?

A. Yes, if it was, indeed, a machine gun, it would be.

Q. Did he mention any other substance besides cocaine or marijuana that he saw there?

A. Just the cocaine, the marijuana, and the paraphernalia.

Q. When you say paraphernalia, what do you mean?

A. The scales. He also made a reference to a cut, which is a term used, a cutting agent for cocaine.

Q. Did you know that to be a cutting agent for cocaine when he mentioned it?

A. He said it was a white powder cut. That is a terminology used by the drug culture -- a cut.

Q. Based on your conversations with this informant, what were your conclusions?

A. I had no reason to disbelieve him, the terminology he used, the way he spoke of the cocaine as being a white powder residue, speaking of marijuana as "pot." I

believed that he knew what he was talking about.

Q. Now, how many marijuana and cocaine investigations have you been involved in?

A. In excess of twenty, approximately.

Q. Based on information you received from this confidential source on that day, what did you do?

A. I went to Sergeant Tim Good, who is Sergeant at our narcotics unit. I told him what information I had. At the time, there was another investigator, Investigator Richard Brooks, in Sergeant Good's office.

When I brought up the name, Ricky Whitehead, he told me that he had given another investigator, Whitney Burnett, some information on Mr. Whitehead that he had received in reference to an investigation being done by the Coral Springs Police Department.

At that time, Investigator Burnett was out of town and we could not contact him until the next week when he got back in

town. So the investigation -- nothing else was done at that time.

Q. Did you talk to Investigator Burnett when he got back?

A. Yes, I did.

Q. What did that consist of?

A. That was on November the 13th, 1985. I asked him if he had some information on a subject by the name of Ricky Whitehead, and he said, "Yes," he did. He produced me a letter from Coral Springs Police Department Supervisor, advising that they were doing an investigation -- a detective Redding was doing an investigation on Mr. Whitehead, and some copies of some phone numbers.

Q. What type of an investigation?

A. It was a narcotics investigation, whereas Mr. Whitehead was allegedly involved in some cocaine transactions.

Q. Now, after you received that information, what did you do?

A. At that time, on the 13th, I again verified the utilities at that residence,

to make sure they were still active; and they were. I contacted the State Attorney; and he said to come up the next day and we would put it together to obtain a search warrant. I also verified the University Police Department at the University of Florida that Mr. Whitehead was listed as a student at the University and he was in his third year in the criminal justice program.

Q. Did you determine whether or not Mr. Whitehead had had any prior criminal record?

A. I did on the 14th, the next day -- on November the 14th 1985.

Q. How did you do that?

A. I ran Mr. Whitehead's name, race, sex, date of birth through the computer at the Alachua County Sheriff's Department through a teletype and they come back with -- that he had been arrested in January of 1984 on possession of marijuana by the Tamarec Police Department, had been turned over to the Broward County Sheriff's Department.

Q. Did that indicate whether it was a felony or misdemeanor amount of marijuana?

A. The teletype did. I made contact that same day with a white female records clerk at the Broward County Sheriff's Department. She pulled it; told me that the chart which was over twenty grams of marijuana; and that Mr. Whitehead had been sentenced to one year's probation; adjudication had been withheld and he was to testify against a co-defendant.

Q. Now, do you recall any other information that you had before you proceeded to secure a search warrant?

A. That's about all the information that I had up to that time.

Q. What did you do with that information?

A. I went to the State Attorney. I was at the State Attorney's office -- Mr. Dan Clark. We wrote up the affidavit, and application, and presented it to Judge Sanders. I was there; Mr. Clark was there. Judge Sanders read it. He asked me if it

was true to the best of my knowledge, and I said it was; and he signed it.

Q. What did you do once he signed the search warrant?

A. I called Sergeant Good at the narcotics unit and advised him that the search warrant had been signed. One of the investigators, Investigator David Huckstep, drove by the residence to see if anyone was there. There was a white and brown van and a black Corvette, with a temporary tag, in the driveway.

Q. Were you able to determine by the tag who the vehicle belonged to?

A. By the one on the van, we were. The temporary tag in the window of the Vet, we were not able to get close enough to get the tag number.

Q. Who was the van registered to?

A. It was registered to a La Venita Marketing Company out of Coral Springs.

Q. What did you do after that?

A. I went back to -- I went to the

narcotics unit. And when Investigator Huckstep got back, we conducted a briefing on the execution of the warrant and proceeded to execute that warrant.

Q. All right. And when you got back to the residence, was there anyone there?

A. I went by and picked up a pass key from an employee of Mr. George's. We all met at a church in the 4700 block of N.W. 34th Street, which is right down from Mr. Whitehead's residence. Sergeant Good and Investigator Brooks drove by the residence, and the vehicle was not there at that time.

They came back to tell us that. And we were sitting at the church to try to determine exactly what we were going to do at that point.

A black Corvette was observed southbound on N.W. 34th Street, appeared to be the same one. Investigator Brooks and Sergeant Good drove back by the residence. This was about a five-minute time lapse. And advised us that the black Corvette with

the wide wheel drive was backing out of the driveway.

At that point, the rest of us got in the position in the intersection of N.W. 34th Street and N.W. 46th Avenue, and the Corvette was stopped.

Q. How far away from the residence was the Corvette stopped?

A. Approximately two-tenths of a mile.

Q. And who was inside that automobile?

A. Mr. Whitehead.

Q. Once Mr. Whitehead stopped, what happened?

A. He was stopped and gotten out of the vehicle. Investigator Huckstep asked him his name. He identified himself as Rick. He asked him what his last name was, and he said, "Rick Whitehead."

Investigator Huckstep advised him that we had a search warrant for his residence and asked him to go back to the residence with us; and he refused.

Mr. Whitehead was detained at the

location where the vehicle was stopped. Myself, Mr.. Huckstep, and Investigators Pate and Stinson -- and there were a couple of other people -- I don't recall exactly who -- went to the residence to execute the warrant.

Upon arriving, Investigator Huckstep did the appropriate knock and announced several times. We got no response from inside of the residence. We used the pass key to enter the residence and did a protective sweep; and there was no one inside of the residence.

Q. Now, had Mr. Whitehead been given a copy of that search warrant at that time?

A. Not at that point, he had not.

Q. What did you do after the protective sweep?

A. Went in the northeast bedroom, and I observed a plastic baggy laying on the floor, a zip-lock baggy containing of what I knew to be over twenty grams of cannibus. At that point, I had Investigator Huckstep,

who had a portable radio, to advise Sergeant Good to arrest Mr. Whitehead at that time.

Q. Was he placed under arrest?

A. Yes, he was.

Q. Was he given a copy of the search warrant?

A. Probably fifteen to twenty minutes after that he was. He was brought back to the residence. I went up to Mr. Whitehead and identified myself as a deputy sheriff and gave him a copy of the search warrant. He made a nodding motion for me to lay it on the hood of the vehicle, which I did; and he read it in the presence of Investigator McManus.

Q. What did you do after you notified the unit to arrest Mr. Whitehead?

A. I had a search team of Investigator Pate and Investigator Kirkpatrick and Investigator Roberts. They continued to search in the northeast bedroom. Myself and Investigator Huckstep searched the rest

of the residence.

Q. What did you find?

A. At the time of the search, approximately three-point-seven ounces of suspected cocaine was located. Approximately four pounds of suspected cannibus was located. And numerous weapons.

Q. Now, would you tell the Court -- Do you have a list of the weapons there?

A. I do.

Q. Would you read that?

A. There was a suspected silencer. It was a Dan Wesson stainless steel .44 magnum revolver. There was an inner-dynamics KG-9 pistol, 9 milimeter. There was an Oozee 9 milimeter carbine. There was a Colt AR-15. A 223 caliber assault rifle. There was a Remington 30.06, model 760. A Remington 30.06, model 742 with a scope. And there was a Remington pump shotgun, 20-gauge, model 870.

Q. Now, when you indicated to the Court

the amount and quantity -- the quantity of marijuana and quantity of the cocaine, that is a combined total, approximately what you found in various locations. Is that correct?

A. That is correct.

Q. Was there any marijuana found in a certain type suitcase in the residence?

A. Yes, there was.

Q. What type of suitcase was that?

A. It was a maroon with gray-trimmed nylon suitcase with some cannibus in it.

Q. Now, did that become inportant in your investigation later?

A. Yes, it did.

Q. And how did that become important?

A. There was an identical suitcase like that in the Corvette when we stopped it that we could see through the window of the vehicle.

Q. Did there come a time when you secured a search warrant for that vehicle?

A. Yes. At the time of Mr. Whitehead's

arrest, I had confirmed with the State Attorney, Jay Welch, who advised me to seal and secure that vehicle and come back in the next day and obtain a search warrant for the vehicle, which we did. The vehicle was sealed and towed to the narcotics unit. The evidence seals were put on it by Investigator Ausiveto.

The next day, on the 15th, went back to Judge Sanders and obtained a search warrant for the vehicle.

Q. And what did you find in the vehicle?

A. In the suitcase, the maroon with gray-trimmed suitcase, there was fourteen zip-lock bags of suspected cannibus weighing approximately one pound each. There was $545 in United States currency in the console of the vehicle along with some ownership and finance papers on the car.

Q. Who was the car -- Who were the ownership papers in the name of?

A. Ricky Whitehead.

Q. Now, was Mr. Whitehead advised of his

rights at any time?

A. He was at the time of his arrest.

Q. After that time, did he make any statements?

MR. SHEPPARD: I object. I believe from her testimony, it would have to be hearsay and she ought to, at least, even though hearsay is admissible, she has to contribute the source, I believe, Your Honor.

Q. Who advised Mr. Whitehead of his rights?

A. Gainesville police officer, Jim Sammick.

Q. And did he make any statements at that time?

A. Not to my knowledge, no, not to Mr. Sammick.

Q. Do you know any statements he made at a later time?

A. When he was brought back to the residence while Investigator McManus was booking, asking him for booking information

-- name, address and so forth, et cetera -- according to Investigator McManus, he overheard some people talking about the guns, particularly the Oozee and made a statement to the effect of, "Yes, it's my gun, but it's not an automatic."

MS. BARRETT: Thank you. Any other questions that you can -- any other statements that you can recall that he made?

WITNESS: Not that I can recall, ma'am.

MS. BARRETT: Okay, no further questions.

THE COURT: Cross.

MR. SHEPPARD: May it please the Court.

CROSS-EXAMINATION

BY MR. SHEPPARD:

Q. How long did you work as a secretary in the State Attorney's office?

A. Approximately two years.

Q. And during the course of your duties,

did you have occasion to receive training on the preparation of search warrant documents?

A. I did type search warrants, yes, sir.

Q. And accordingly received training.

A. Yes, sir.

Q. And when you became employed at the Alachua County Sheriff's office, you attended the police academy?

A. That is correct.

Q. And you learned about search warrants and applications for search warrants?

A. Basically, yes, sir.

Q. And then approximately two years ago, you became assigned to the narcotics and organized crime unit of the Alachua County Sheriff's office?

A. That's correct.

Q. And at that time, you received more intensified training relating to search warrants and applications therefore.

A. In doing them, yes, sir.

Q. And approximately how many search

warrant applications and search warrant executions have you been involved in in your six years with the Alachua County Sheriff's office?

A. Prior to going to narcotics crime unit, had not obtained any search warrant in the two years that I've been in. I've probably been an affiant approximately six times; and executions, probably twice that -- probably twelve.

Q. Did you know this landlord, Mr. George, prior to the 23rd of October, 1985?

A. Yes, sir, I did.

Q. Had you been furnished information relating to controlled substance violations by Mr. George prior to that time?

A. On one prior occasion, yes, sir.

Q. And when was that?

A. Approximately two to four weeks prior to that.

Q. And did you obtain a search warrant as a result of that information?

A. Yes, sir, I did.

Q. And executed that warrant?

A. Yes, sir.

Q. And what is it -- a maintenance man that works for Mr. George that furnished him the information, and then he relayed it to you?

A. Not that I know of.

Q. Pardon me?

A. Not that I know of, no, sir; it was not.

Q. Was it Mr. George's observations himself on a prior occasion that gave rise to your obtaining a search warrant?

A. That's correct.

Q. And had you met him during that investigation in person?

A. At the time of the execution of the warrant, I met him.

Q. That's in your prior investigation.

A. Yes, sir.

Q. Now, directing your attention to the Whitehead investigation. On October the 23rd, Mr. George contacted you and

contacted you specifically, did he not?

A. That is correct.

Q. And he contacted you because you have been of some help to him on a prior occasion.

A. Yes, sir.

Q. And, as a result of the prior investigation, to your knowledge, did he evict the tenant that was in the house that he was managing?

A. I have no knowledge of that.

Q. Do you know, as a result of this investigation, that Mr. Whitehead was evicted from Mr. George's property, do you not?

A. Yes, sir.

Q. And did you meet Mr. George on the 23rd of October when he contacted you to complain about car traffic at Mr. Whitehead's house?

A. No, sir, that was by telephone.

Q. And October the 8th, Mr. George contacted you by telephone again?

A. November the 8th.

Q. I mean November the 8th.

A. Yes, sir.

Q. And this so-called source you spoke to on the 8th of November was by telephone also.

A. That is correct.

Q. And you didn't see that person on the 8th.

A. No, sir I did not.

Q. And you didn't see him between the 8th and the 14th either, did you?

A. No, sir, I did not.

Q. In fact, your entire investigation was based on a telephone conversation with an unknown individual that was represented to you by himself to work for Mr. George.

A. That part of it, yes, sir.

Q. And did you know his name at that time?

A. I knew him as a nickname.

Q. But you didn't know enough to run him on the N.C.I.C. or F.C.I.C., did you?

A. No, sir, I did not.

Q. In fact, you didn't have that information until after you arrested Mr. Whitehead.

A. I didn't have that information until a couple days ago.

Q. And you didn't know what his motivation for furnishing you this information at that time was, do you?

A. No, sir. Just a citizen.

Q. You had no prior contact with this individual, so you knew nothing about prior reliability, did you.

A. That's correct. I based it solely on my conversation with him on November the 8th.

Q. And you knew nothing about his basis for knowing about marijuana or cocaine by identification, other than he used the word 'pot.' Would that be accurate?

A. He told me he had seen cocaine and pot in the past and knew what it looked like.

Q. Did he tell you how many time he had

seen pot before?

A. No, sir, he did not.

Q. Did he tell you that he'd ever looked at a substance that had been chemically analyzed before he concluded it was pot?

A. Not chemically analyzed, no , sir.

Q. On how many occasions did he tell you that he had seen cocaine on prior occasions?

A. He did not specify; only that he had seen cocaine in the past.

Q. Accordingly, he did not tell you that he'd ever looked at a white powdery substance that had been chemically analyzed that represented to him to be cocaine as his basis of knowledge that that substance was, indeed, cocaine?

A. Not chemically analyzed, no, sir.

Q. You had no idea what ill feelings he may or may not have had relating to Ricky Whitehead, did you?

A. I don't know any feelings of Mr. Whitehead and the source.

Q. And you didn't ask him, did you?

A. No, sir, I did not.

Q. And did he tell you when he had been in the house?

A. It was on that date, November the 8th.

Q. Did he tell you that?

A. Yes, sir, he did. He had just gotten back from that residence at the time the telephone call was made.

Q. Who told you that? Mr. George? Or --

A. Mr. George told me that, and I asked the source himself. "Had you just been inside the residence?" And he said, "Yes, I have."

Q. Did he tell you that that's when he made these observations?

A. That's correct.

Q. Did he affirmatively tell you that?

A. yes, sir, he did.

Q. Or are you assuming that?

A. No, sir. That's what he said.

Q. Can you explain to me why you didn't say in your application for the search

warrant when this confidential source allegedly made these observations?

A. If I may look at it. I though it had that date on there.

MS. BARRETT: Do you need to see a copy of the search warrant?

THE COURT: Here you are.

BY MR. SHEPPARD:

Q. Your application is 1A - 2A. And 1A is the one for the house.

A. Okay. Said, "I conversed with him on November the 8th and he related the following: -- " It does not specify if it was first specific act, but it was the same date.

Q. Do you know from your training and experience and education of a legal term called staleness, when it comes to a search warrant, do you not?

A. That's correct.

Q. And you know the rule of thumb is that you must show that there is a reason to believe that illegal activity is afoot in

the premises to be searched and that rule of thumb is within a thirty-day period prior. Correct?

A. That -- yeah. Appropriate time. That's correct.

Q. And that's so that people will know that there is criminal activity or contraband present at the time the warrant is issued. Correct?

A. Right.

Q. You knew that from your training.

A. Yes, sir.

Q. Directing your attention back to October 23, would you describe for me what you told Mr. George about his complaint of car traffic at this location where Mr. Whitehead leased this house?

A. Well, I took the information and told him that we would check it out.

Q. And, on the 23rd, did you indeed check it out?

A. No, sir. Due to other investigations, I didn't have time to check it out at that

time.

Q. When did you check it out, if ever?

A. I went by that residence one time. That was on November the 12th.

Q. November the 12th?

A. Yes, sir.

Q. That was after you received your second telephone call?

A. That's correct.

Q. Is there any reason that you can explain why a landlord would call a narcotics officer and complaining about car traffic?

A. He just said he thought it was funny.

Q. What did he mean?

A. Unusual. Heavy flow of traffic.

Q. And is Mr. George a deputy sheriff or especially in any way, shape, or form related to the Alachua County Sheriff's office, to your knowledge?

A. Not to my knowledge.

Q. How about the confidential source?

A. Not to my knowledge.

Q. Did the confidential source indicate to you that he had opened these dresser drawers?

A. No, sir. He indicated that they were partially opened at the time he entered the bedroom.

Q. Now, am I correct in assuming that you were present when Mr. Whitehead was stopped in the black vehicle you just described?

A. That is correct.

Q. And who else was present?

A. Investigator Huckstep. Investigator Pate. The Gainesville Police Officer James Sammick. And there may have been other people. I do not recall everybody.

Q. And was he stopped by a blue light?

A. The Gainesville Police Officer was behind us, and we were in a blue van. We pulled in and blocked the intersection and got out with jackets on, clearly stating that we were police officers. Investigator Huckstep and Pate identified themselves as police officers.

Q. It wasn't what you would call a traffic stop. It was a stop where his forward movement was impeded by the presence of your police van.

A. That is correct.

Q. And he was asked to exit the vehicle?

A. I don't remember exactly how he was asked to get out. I was getting out of the van at that time.

Q. As things progressed, he got out of the vehicle?

A. Yes, he did.

Q. Then what happened?

A. Investigator Huckstep asked what his name was. He replied, "Rick."

The investigator said, "What is your last name?"

"Whitehead."

At that point, he was advised by Investigator Huckstep that we had a search warrant for his residence and asked him if he would go back with us. And he said he was not going anywhere.

Q. Was he free to go anywhere other than that residence or to stay there?

A. He was asked to go back to the residence with us.

Q. But he declined that invitation?

A. Yes, he did.

Q. My question is -- Was he free to go anywhere else in the world other than to stay right there under -- in the custody of the police, or to go to his house?

A. We detained him as an investigative stop until we executed that warrant.

Q. He was not free to go.

A. Not at that time, he was not.

Q. And you proceeded to the house.

A. That is correct.

Q. And you were present when the entry was gained to the house.

A. That is correct.

Q. And how was that entry gained?

A. There was a knock. And the Sheriff's Department had a search warrant for his residence. It was done several times. We

got no response and we used a pass key, and went inside the residence.

Q. And who uttered those statements?

A. Investigator Huckstep.

Q. And during the course of the protective sweep is when you saw the marijuana in the bedroom?

A. After the protective sweep was done.

Q. All right. From the time of the stop of Whitehead's vehicle until he was placed under arrest, would you give me your best recollection of the time that had passed?

A. Approximately fifteen minutes.

MR. SHEPPARD: If I could have just a moment, Your Honor.

THE COURT: Surely.

BY MR. SHEPPARD:

Q. Who actually wrote this application? You?

A. Assistant State Attorney, Dan Clark. I gave him the facts, and he wrote the affidavit.

Q. Did you give them to him in writing?

A. Verbally.

Q. You didn't reduce anything to writing?

A. Did I?

Q. Police.

A. No, sir.

Q. Did you refer to anything in writing in giving him the oral facts?

A. Just my original notes.

Q. Made on the 23rd of October?

A. 23rd, the 8th, the 13th and 14th.

Q. You had kept a diary, if you will, of your notes?

A. Yes, sir, I did.

Q. And reviewed those in detail with him?

A. That's correct.

Q. And is there any reason why you didn't have a face-to-face meeting between the 8th and the 14th with this confidential source?

A. No, sir, there was no reason why I did not. I just did not.

Q. There was nothing to preclude you from having that meeting, I take it.

A. That is correct. I felt like I had

the information I needed.

Q. And you have access to controlled substances in your duties as a narcotics officer? Do you not?

A. Yes, sir.

Q. And you have access to go to a chemist, in your duties as a narcotics officer; do you not?

A. Ours are sent to the F.D.L.E. lab in Jacksonville.

Q. And you have access to those people.

A. That is correct.

Q. And there was no reason why you could not have displayed a substance that had been verified by a chemist to be cocaine and marijuana to this confidential source during this six-day period, is there?

A. I did not have any narcotics on hand in order to do that.

Q. Well, did the Alachua -- Are you testifying that the Alachua County Sheriff's Office in the six-day period could not have gotten any?

A. We may have been able to obtain some.

Q. Right. And at what point did Federal officials become involved in this investigation?

A. After the arrest.

Q. After the 14th?

A. That's correct.

Q. And that was in the presence of -- Why did they get involved?

A. The firearms.

Q. Okay. Are not individuals, who are employed by the Alachua County Sheriff's Office and assigned to the narcotics and organized crime unit, part of a Federal traffic force dealing with controlled substance, law enforcement?

A. Federal task force? We're a combined, local unit.

Q. What does that mean? Explain that to me.

A. Gainesville Alachua County combined narcotics and organized crime unit. We're locals combined with the officers from the

Alachua County Sheriff's Department and Gainesville Police Department and University Police Department.

Q. Does the D.T.A. or F.B.I. or any other Federal agency have any involvement with that task force?

A. Not unless we asked for their assistance.

Q. Did you ask for their assistance in furnishing you controlled substance so that you could verify the basis of the knowledge of this confidential source in his ability to identify cocaine and marijuana?

A. No, I did not.

Q. Now did -- Was it explained to you that this confidential source was on the premises of -- as the result of an authorized entry?

A. He was a maintenance worker; and according to Mr. George and the tenants, a contract, lease agreement, these maintenance checks are done periodically. I believe it's quarterly. And that he --

Mr. George's office had sent Mr. Whitehead a notice that the inspection was going to be done and asked him to respond back to an appointment date; and he did not.

If I recall correctly, the eighth was the last day of the inspection. They had not heard from him, so the maintenance worked went in to make the inspection.

Q. Isn't it true, this business about the lease agreement, and this notice is something that has come to your knowledge in the last couple of days?

A. No, sir. I knew about that prior to that. I've got the copies of it recently.

Q. At what point did you get copies of the least agreement?

A. I got that a couple of days ago from F.B.I. agent, Babshaw, who had gotten it previously to that.

Q. Well, let me restate my question. Between November the 8th and the 14th, did you have in your possession for your reading the lease agreement that you're now

referring to that you got from the F.B.I. two days ago?

A. No, I did not.

Q. Did you have access to the notice that you have described that purportedly was sent to Mr. Whitehead relative to this maintenance inspection prior to two days ago?

A. Not between the 8th and the 14th, I did not.

Q. When did you get the notice? Didn't you get it at the same time you got the lease from the F.B.I.?

A. At that time, yes, sir.

Q. That was two days ago.

A. Approximately, yes, sir.

Q. And in your review of that lease agreement, were you able to find the provision that was referred to?

A. I read the face letter which states about the inspection.

Q. Did you read the lease agreement?

A. No, sir, I did not.

Q. Was there any reason why you did not read it to verify whether the information that was given to you was true and correct?
A. Quite frankly, I have not had time to read it.

MR. SHEPPARD: May I approach the witness, Your Honor?

THE COURT: Surely.

BY MR. SHEPPARD:

Q. Let me hand you a document that is entitled, 'Rental Contract,' and ask if you can identify that document, please, ma'am?
A. It's a rental contract, yes, sir. It's a copy.
Q. Would you review it and determine if it has a provision that allows Mr. George to go into the premises that he's leased to Mr. Whitehead?

MS. BARRETT: Your Honor, I think this is a waste of time. She said she never read it. I don't know what relevance it has to --

THE COURT: Sustained. Is that,

indeed, the agreement that you have described that you understand to exist between Mr. George as an agent for a property owner and Mr. Whitehead who leased the property?

A. It is a copy, yes, sir.

MR. SHEPPARD: I would ask that that be marked as Defendant's Exhibit 1, and ask if I can, out of turn, introduce it into evidence?

MS. BARRETT: No objection.

THE COURT: Received in evidence.

BY MR. SHEPPARD:

Q. Ma'am, did you ask Mr. George if he could have a copy of the lease agreement between the 8th and the 14th?

A. I don't recall the specific time I asked him for a copy of it.

Q. How did it come to pass that the F.B.I. gave you a copy of it rather than Mr. George, if you know?

A. I don't recall why they did it instead of me.

Q. Did you give Mr. George any instructions on October 23, at the time he complained to you about the car traffic?

A. No, I did not.

MR. SHEPPARD: I have no further questions, Your Honor.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. BARRETT:

Q. Officer, I'm going to hand you what is marked as Government's Exhibit Number 3. Would you tell the Court what that is, please?

A. It's a tenant letter, advising they need to inspect the rental premises and to please call between November the 4th, 1985, and November 8th, 1985, for inspection. If you want to be at the residence at that time, please call and make an appointment.

Q. Is that the letter you are referring to in your earlier testimony that you had a copy of, along with the lease agreement?

A. That is correct.

MS. BARRETT: I would like to introduce this into evidence.

MR. SHEPPARD: No objection.

THE COURT: Take in.

BY MS. BARRETT:

Q. Now, I'm trying to clarify something. You indicated you didn't have copies of those documents until recently. When were you aware of those documents?

A. At the time of contact with Mr. George on November the 8th, 1985.

Q. He told you about those documents at that time?

A. He told me they had -- per the lease agreement that they could go in and do these quarterly inspections.

Q. Now, you knew Mr. George to be a property owner in this community; is that correct?

A. That is correct.

Q. He was the owner agent for this house.

A. That is correct.

Q. It was his property, or he was the

agent for it; is that correct?

A. That's correct.

Q. He had provided you prior reliable information in the past; is that correct?

A. Correct.

Q. Did you have any reason to question him concerning these leases --

MR. SHEPPARD: Objection. It's irrelevant.

THE COURT: Say it again.

BY MS. BARRETT:

Q. Did you have any reason to question Mr. George when he tells you about these leases? My reason for the question --

MR. SHEPPARD: I withdraw my objection. I missheard the question.

THE COURT: Go ahead.

A. I had no reason to doubt him.

Q. Now, when you spoke to this maintenance man, who you were introduced to through Mr. George on the 8th, did you have any reason to suspect the information he was giving you was not correct?

MR. SHEPPARD: Objection, Your Honor. That is irrelevant.

MS. BARRETT: The whole issue --

THE COURT: Overruled.

BY MS. BARRETT:

Q. Did you have any reason so suspect that a private citizen coming to you with this kind of information had any reason to fabricate a story such as this?

A. No, I did not.

Q. Did you have any reason to believe that6 he might have a grudge against Mr. Whitehead?

A. No, I did not.

Q. Anything that was said gave you that inference?

A. No.

Q. When someone calls in and provides information to the police, do you always run an N.C.I. check on those people?

A. We don't always have their name.

Q. Would you, in any event, if a private citizen just gave you information

concerning proposed information they had through their contacts on the -- in the community?

A. Would you (indicating) --

Q. Okay. If a private citizen calls up and gives you information, is it your department's policy to run their name through all the computers to see if they have a criminal history?

A. No.

Q. Is it your practice to show any citizen who comes forward with information about illegal narcotics, is it your practice to show them narcotics to give them a test and see if they really can identify narcotics?

MR. SHEPPARD: Judge, I object. That isn't relevant to the issue here. I'm sure that everybody that calls the Alachua County Sheriff's Office isn't -- doesn't provide the information that ultimately results in the issuance of a search warrant. By the same token, I suspect that

calls that come to the Alachua County Sheriff's Office about suspected presence of controlled substance does not give rise to the issuance of a search warrant. There is a different qualm here that ought to be attributed to these folks.

MS. BARRETT: I will readdress the question.

BY MS. BARRETT:

Q. When someone calls to give you information concerning what you perceive will be a search warrant in the future, do you conduct a little test of these people to see if they really can determine cocaine and marijuana?

A. I never have.

Q. Have you ever heard of anybody else doing that?

A. I haven't.

Q. When was A.T.F. called? When I say 'A.T.F.', I mean the Federal Law Enforcement agencies.

A. November the 15th, 1985.

Q. Is that the date of the search warrant?

A. That is the day after.

Q. And what was your purpose in contacting A.T.F.?

A. Have them come down and look at the silencer and the weapons to determine if they were, indeed, any of them were automatics.

MS. BARRETT: Thank you. No further questions.

THE COURT: Thank you, ma'am. Next witness.

MS. BARRETT: That would be the government's witness, Your Honor.

THE COURT: Mr. Sheppard.

MR. SHEPPARD: No witnesses, Your Honor.

THE COURT: I will hear your argument.

MS. BARRETT: I believe it's Mr. Sheppard's motion. I'll let him argue first.

THE COURT: He's just gathering up his

papers.

MR. SHEPPARD: I can't argue without my papers, Judge.

THE COURT: All right.

ARGUMENT

BY MR. SHEPPARD:

Your Honor, the government's response, I think, correctly states in part what the law is, and that is the government citation of Illinois versus Gaits.

As the Court is aware, prior to the Illinois versus Gaits, there were two cases that set up a two-prong analysis to determine whether probable cause based on an informant's information existed. And it was kind of an equation. On the one hand -- It's the Agwillar-Spinelli test, as this Court is aware; and there are two prongs. One is the informant's reliability. And the second is the informant's basis of knowledge. And those cases, in the late -- or mid and late '60s, were modified contrary to the United States' position,

which I submit is that they contend that Agwillar and Spinelli were overruled. But in Illinois versus Gaits, in '83, the United States Supreme Court adopted a totality of circumstances test that supplants, if you will, or modifies the Agwillar-Spinelli test for determining when probable cause exists for the issuance of a search warrant.

And in Illinois versus Gaits, the United States Supreme Court, in fact, said that Agwillar versus Spinelli neither prong has been abolished. If one prong is not met, then greater emphasis will be placed by the reviewing Magistrate, Your Honor, in determining whether probable cause existed.

And, if you apply the Agwillar-Spinelli test, Illinois v Gaits test, or any other test to the information contained in this affidavit, you can only conclude one thing for sure. One is -- or a couple of things for sure. One is that this confidential source was not previously

reliable nor was it suggested that he was.

There is some language in the application and affidavit for search warrant, Your Honor, respectfully that talks about Mr. George maybe being previously reliable. But he isn't the man that turned pertinent -- got the information that gave rise to the issuance of the warrant.

The other basis of knowledge prong of Agwillar-Spinelli must, therefore, be really looked at through a magnifying glass because of the total absence of the previous reliability prong.

And the question is -- Can a police officer, relying on someone that they're talking to on the telephone who only identifies themself by nickname, whether or not the substance they are looking at is, indeed, a controlled substance?

And I respectfully submit, Your Honor has been in the courtroom where cocaine has been introduced. It looked like many

household items to most people. Marijuana looks like many items from nature to most people. And it takes special training. In these trials, we bring in chemists. Police officer receive training. People with nicknames who you don't even know who they are, talking to you on the telephone, I respectfully submit that you must discount what they tell you unless it can be demonstrated that they have a basis for that knowledge.

And there is no showing on this record that either prong of Agwillar-Spinelli and, therefore, Illinois versus Gaits has been met. And I respectfully submit that on those grounds that the warrant for Mr. Whitehead's premises must fall because it does not contain probable cause.

More importantly, however, Your Honor, is a second reason why this affidavit or application does not contain probable cause. The affidavit is absolutely and totally silent as to when Mr. Maintanceman

was present in the premises sought to be searched by the search warrant. He could have been there in 1950 for all you can read from this search warrant.

The pertinent date is when the individual observed the contraband, giving rise to the probable cause so that the issuing Magistrate and everyone else involved can have a reasonable belief that the contraband is present at that time. And there is no allegation in this affidavit, whatsoever, as to when the observation was made. True, on November the 8th, the confidential source told the police officer that he had seen marijuana or what he believed to be marijuana and cocaine and automatic weapon; but he doesn't say, or the affidavit doesn't say, when he says he saw that.

And, Judge, based on the detective's own testimony, her own training, experience and education teach her that; and that it is an absolute requirement.

For all we know, this so-called authorized entry may have occurred days, weeks, months, or even years before this warrant was applied for. And, as a matter of law, it was impossible for the Judge that issued this warrant to determine that it was reasonable to believe that there was contraband in that house at the time that the officer applied for this warrant.

And I respectfully submit, Your Honor, that the warrant is invalid for two reasons. 1) Under the totality of the circumstances equation under Illinois versus Gaits, taking into account that it does not overrule Agwillar-Spinelli, that there is no basis of knowledge for this confidential source to have known that this was cocaine and marijuana; it was not reasonable to believe he could.

Secondly, there is no allegation, whatsoever, that he was previously reliable because, as the detective testified, he wasn't previously reliable.

Alternatively, respectfully, Your Honor, probable cause fails because there is no information regarding when the information allegedly or the informant allegedly obtained his facts.

Your Honor, I have cited three cases in my papers that I submitted to the Court. And it's an interesting thing to research. I found a few more since then that I would like to furnish the Court some citations to.

I would like to cite the Court to United States versus Boyd, 422 Fd 2nd 791. It's a 1976 circuit case. The search warrant affidavit in that case did not supply the date of surveillance on which the alcohol tax unit investigator smelled the odor of fermented liquor; and, accordingly, even though it was written on a handwritten draft, the warrant was invalid and the evidence was suppressed.

I have cited to the Court a couple of 9th Circuit cases and an additional 6th

Circuit case, as I say, cited at Page 3 in my memorandum in support of my motion.

In the Poldo case, it's the same situation, ironically, in a non-tax paid liquor case.

I would like to furnish the Court with the citation to Durham versus United States, which is cited at 403 Fd 2nd 190. It's another 9th Circuit case. It's a counterfeit case.

And, again, there was nothing in the affidavit from which the commissioner could reasonably conclude that any of the alleged counterfitting activities described therein continued beyond the dates dated in the affidavit. It was a prospective affidavit, which it's a little bit different but it cites the other cases that are clear on this point.

The interesting thing in doing the research on this point, Your Honor, is that all the authority -- there are very few cases. And from reading the commentaries

on this problem, specifically LaFaye, who I hope this Court regards as an authority on the 4th Amendment, he points out that this problem is overlooked sometimes, but that there's such a glaring defect that the problem doesn't occur that often.

Now, the government, although they haven't raised in their papers, the good faith conception under Leon, United States versus Leon, from what they have said in the courtroom here, I suspect that that's going to be their argument.

Even if the warrant is bad, forget it, because the officer acted in good faith.

Respectfully, Your Honor, Leon doesn't stand for such a bold proposition. And I respectfully submit there are three areas that the United States Supreme Court would find to be exceptions to the good faith exception, if you will, to the exclusionary rule.

First, and not applicable here, is a Frank v. Delaware problem where there is a

reckless disregard for the truth by the affiant.

The second would be where the Judge has gone too far in maintaining his neutrality and judicial role such as in [phonetic] Lo Ji Sales, which is a situation where the judge actually went with the officers executing a search warrant in a 1st Amendment film case.

And, finally, and this appears at 82 Lawyers Edition. Leon is reported at 82 Lawyers Edition 677 or 468 U.S. or 104 Supreme Court Reporter. But at Page 699 of the Lawyers Edition 2nd, the Supreme Court talks about the third exception. And that is -- and I would like to quote the Court very briefly -- "Knowing when an officer manifested objective good faith in relying on a warrant based on an affidavit -- quote -- so lacking the indicia of probable cause as to render official belief in its existence entirely unreasonable.

Finally, depending on the

circumstances of a particular case, a warrant may be so facially deficient, i.e. in failing to particularize the place to be searched or the things to be ceased that the executing officers can not reasonably presume it to be valid."

And I respectfully submit, Your Honor, that there is a total absence of probable cause. This is an abjective analysis as the Court requires; and objectively, this officer knew about staleness and had been trained and received experience and education relating to staleness. And there is not one reason in the world for any reasonable person applying an objective standard to believe that contraband was present at the location of 3224 Northwest 48th place here in Gainesville at the time that entry was made to that house with this search warrant because there was no reference whatsoever as to when it had been there before -- six months, six years -- we don't know.

And I respectfully submit that that is not good faith because it is on its face, an invalid warrant, for such basic reasons that no one would argue with it.

With regard to our position of the search of the vehicle. In our second motion to suppress, we, in essence, have attacked that second warrant, Government Exhibit 2B, as fruit of the poisonous tree from the first warrant.

I would like to add an additional observation; and that is that -- is it reasonable to believe that a person that has two sets or two pieces of luggage from the same set would necessarily put contraband in both of them?

And I respectfully submit that this search warrant was good for the house and any vehicles parked in the curtilage thereof.

The detective testified that this -- that Mr. Whitehead, in his vehicle, was stopped two blocks away in Gainesville; and

certainly that was not argued by the government to be within the curtilage.

After that detention, which I respectfully submit was an arrest, a search warrant was obtained to search the suitcase in the car because it was a piece of matching luggage from a set that contained marijuana residue in the first piece of that set.

And, Judge, that is just not reasonable to expect that if someone put a bomb in one of their suitcases, in this set of Samsonite Luggage, that they're going to have a bomb in every other piece of that luggage, whereever it was located.

And I would respectfully submit that the second search warrant does not contain probable cause to believe that anything in that car constituted contraband.

The third motion to suppress, Your Honor, attacks the legality of the detention of Mr. Whitehead, I believe that by pointing out the invalidity of the

search warrant affidavit for that car and by representation of the government and the testimony of the detective that there really were no fruits of that detention, that that would render defendant's third motion to suppress moot, with the understanding that the grounds are covered by the second motion as it relates to the affidavit for the search warrant and the search warrant.

Thank you, Your Honor.

THE COURT: Thank you.

MS. BARRETT: Your Honor, very briefly. I think Illinois versus Gaits clearly answers this question. I appreciate Mr. Sheppard bringing up Leon because if there ever was a question on this warrant I think Leon certainly handles it.

I think you can read the search warrant in a non-technical manner, which Illinois versus Gaits certainly teaches us what we have to do is imply that that --

that a C.I. entered the house on November the 8th. The affidavit says no contact with George, that the affiant conversed with the confidential source on that date and that the confidential source had been inside the above described house on authorized entry.

I think it was not clearly stated. It certainly implied in that case.

Even if it's not, certainly will take care of this because they have shown absolutely no bad faith on the part of law enforcement officers in this case. Nothing here would imply that every benefit shouldn't be given to officers who was clearly trying to do their duty in the most careful manner possible.

The task of the Magistrate in the search warrant situation -- in this case we had a circuit judge, a state circuit judge -- the standard is the same. The task is to make a practical common sense decision that there is -- quote -- a fair

probability that contraband or evidence of crime will be found at a particular place.

That language is found on Page 238 of Illinois versus Gaits. When you have a private citizen coming to the police and saying, "I've seen marijuana. I've seen cocaine in a house. And I know what it looks like." If that's not a probability, I don't know how much we would need for a search warrant. And that's what we have in this case.

The central teaching of Gaits is that probable cause standard is a practical non-technical concept. It is no longer the two-prong test.

I don't know how the defense can argue that we still are using a two-prong test when it very clearly states in Illinois versus Gaits that, on Page 238, we conclude that it is wiser to abandon the two-prong test established by our decision in Agwillar versus Spinelli. In its place, we reaffirm the totality of the circumstantial

analyses that traditionally have informed probable cause determination.

That is no longer the standard, the two-prong test. It is the totality of the circumstances. I'm not going to go back over all the facts. The Court has heard all the testimony. The Court has before it the affidavit of the law enforcement officer. But Illinois versus Gaits tells us on Page 236 that great depth should be given by any reviewing court to the initial determination of probable cause.

And clearly, the standard of review is, for a probable cause determination, is so long as a Magistrate has substantial basis for concluding that a search would uncover evidence of wrongdoing, the 4th Amendment requires no more.

When you have a homeowner or agent calling the police and saying, "This house that I'm responsible for, I sent someone in to do maintenance work and they came back and told me they found drugs in it," I

think that's certainly a probable cause determination.

As to the second search warrant, I believe that rises and falls on the first -- in my opinion they did not need a second search warrant; but, in abundance of caution and in the absence of bad faith, they went back and they had another search warrant issued just to be sure that they had proper authority to enter that vehicle. I think the grounds were certainly there to search that vehicle. They searched it and, sure enough, they did find marijuana in the same type of container in which they had found marijuana inside the house.

I think there is no doubt in this case that the officers were informed, had a basis for their information, proceeded carefully with that information, and properly secured a search warrant. Therefore, none of the items should be denied entrance into evidence at the trial.

THE COURT: Thank you, ma'am. Any

further, sir?

MR. SHEPPARD: Your Honor, earlier in the same case, Illinois versus Gaits, the Supreme Court of the United States did not say, "We overrule Agwillar-Spinelli. They are no longer the law."

What they said is that Agwillar and Spinelli, those two-prong standards, set forth in those two cases, no longer are to be strictly adhered to. However, the informant's reliability and basis of knowledge remain important factors in the probable cause calculus; and a deficiency in one may be compensated for by a strong showing of the other.

And for the government to say Agwillar-Spinelli had nothing to do with this is not to have read Illinois versus Gaits. And I respectfully submit that Agwillar and Spinelli are a viable part of the analysis required by Your Honor to apply to these facts as part of the totality of the circumstances.

And I respectfully submit that neither prong has been met in this application for search warrant.

MR. SHEPPARD: Thank you.

THE COURT: We'll take about a ten-minute recess.

(Recess at 3:08 p.m.)

THE COURT: Be seated, please. The Court has reviewed the affidavit under what I understand is the requirements of Illinois versus Gaits; and I conclude that those affidavits presented sufficient information for the judge to issue the warrants based upon the totality of the circumstances presented. Therefore, the authority had a sufficient basis to issue the warrant for the residence; he had more than ample grounds to believe -- to issue the warrant for the vehicle.

Those two motions are denied. The motion directed to the arrest is also denied.

Any other matters?

MR. SHEPPARD: We need ruling on the motion to disclose the confidential informant, Your Honor.

THE COURT: She said she would disclose them to you so that -- Would you take care and do that with him so that he has that information before we come to trial tomorrow? Isn't this set for tomorrow?

MR. SHEPPARD: Yes.

THE COURT: She'll reveal them to you.

MR. SHEPPARD: May we be heard after your next case when you all are back -- you know, on this case?

THE COURT: We're going on a detention here and we might be an hour or two. I don't know how long.

MR. SHEPPARD: That's fine. Quite frankly, the parties have been negotiating. This case has gone with the speed of light. And we hope to be able to come back to the Court at the conclusion of that hearing if we can.

MS. BARRETT: Well, if we could just hear -- have five minutes now, we could be ready to go in an hour-and-a-half if we have to.

THE COURT: Why don't you all go talk.

MS. BARRETT: We know where we are. We just don't know -- He's going to ask you for a continuance, I think, Judge. If we're not going to get one, I think we can get ready to do something else if we have to.

THE COURT: Have you filed a motion for continuance?

MR. SHEPPARD: I have not. As a result of negotiations with the government, I need further time to communicate with my client is my problem. And I don't -- it can't be done in the time with which we have. This case is -- I've been in this case three-and-a-half weeks is the problem.

My client's detained. We're not interested in delaying it; but what I would like to ask the Court -- let us go talk and

come back after your detention hearing if we can, and then we can make our plea.

THE COURT: You all go talk. I'll see you all. We'll take about a five-minute recess and we'll start the next case.

(Recess at 3:25 p.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

_____ _____

Court Reporter Date

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IN THE CIRCUIT COURT OF
THE EIGHTH JUDICIAL
CIRCUIT IN AND FOR
ALACHUA COUNTY, FLORIDA

STATE OF FLORIDA

vs.

APPLICATION AND
AFFIDAVIT FOR SEARCH
WARRANT

RICKY WHITEHEAD

Before me, the undersigned Circuit Judge, State of Florida, personally came Regina French, who by me first being duly sworn, deposed and says that she believes and has good reason to believe:

That the laws of the State of Florida are being violated in and on the following described premises in Alachua County6, Florida to-wit: A one story house of concrete block construction, white in color located at 3224 Northwest 48th Place, Gainesville, Alachua County, Florida. At one end of this house is an open carport adjacent to an open front porch with a greenish colored wood front. A photocopy

of two (2) photographs are attached to this warrant and incorporated herein as part of this description as exhibit 1. To reach this house start at the intersection of northwest 39th avenue and northwest 34th street, Gainesville, Alachua County, Florida. From this intersection proceed north on northwest 34th street approximately five tenths (.5) of one mile to the intersection of northwest 46 avenue approximately one tenth (.1) of one mile to the intersection of northwest 46th avenue and northwest 33rd terrace. Turn north into northwest 33rd terrace approximately two tenth (.2) of one mile. At this point northwest 33rd terrace will curve to the right (east) and turn into northwest 48th place. The aforementioned house is located on the north side of this curve and located at 3224 northwest 48th place, Gainesville, Alachua County, Florida.

Your affiant has probable cause to believe that the following described items

are upon such premises: cocaine and cannabis, controlled substances in violation of Chapter 893, Florida Statutes as well as drug paraphernalia such as scales and baggies in violation of Chapter 893, Florida Statutes. Also an automatic firearm, approximately twenty four inches in length, blue steel; designed to hold a clip in violation of Chapter 790.221, Florida Statutes.

The basis of your affiant's belief is:

Your affiant (hereinafter referred to as YA) Regina French is a duly sworn law enforcement officer who has been continuously employed as a sworn and bonded deputy sheriff by the Alachua County Sheriff's Office, Gainesville, Alachua County, Florida for the past six (6) years. Additionally, YA has been assigned to the Alachua County Narcotics and Organized Crime Unit (NOCU) for the past one year and

eleven months. During her law enforcement career, YA has seen cannabis and cocaine in excess of twenty times each and has training and experience in the detection, identification and investigation of controlled substance violations (including cannabis and cocaine related violations) of Chapter 893, Florida Statutes.

On November 8, 1985 YA was contacted by Mr. Allen George, a real estate agent who is the owner agent for the above described house. Mr. George represented to YA that this house is rented to and being lived in by Ricky Whitehead and that Mr. George had a confidential source (hereinafter CS) who ha information related to illegal narcotics activity by Ricky Whitehead. Mr. George has on a prior occasion provided YA with another confidential source whose information was proven reliable.

Pursuant to this contact with George, YA conversed with CS on November 8, 1985.

CS related the following:

1) that CS had been inside the above described house on an authorized entry and observed in an open drawer of a dresser in a bedroom what appeared to CS to be three to four pounds of loose cannabis. CS stated CS could identify this substance by its smell and appearance as cannabis. YA has conversed with CS and is satisfied based upon her training and experience that CS is familiar with and can identify cannabis.

2) that in a second partially opened drawer CS observed a large clear plastic bag containing a white powder residue CS believed to be cocaine. In this same drawer CS observed seven smaller bags also containing a white powder residue, a set of triple beam scales and a small bottle of white powder CS believed to be a cutting agent for cocaine. YA has conversed with CS and is satisfied from her training and experience that CS is describing cocaine

and cocaine paraphernalia and that CS is familiar with and can identify cocaine and cocaine paraphernalia.

3) that in a opened third drawer of the dresser CS observed what CS believed to be an automatic firearm, blue steel, approximately 24 inches long with a clip inserted. CS related to YA that CS is familiar with firearms as a hobby and YA is satisfied from her conversations with CS that CS is familiar with and can identify an automatic firearm based upon her training and experience.

On November 13, 1985 YA confirmed that utilities at the above described house are in Ricky Whitehead's name and were turned on May 24, 1985.

Independent of CS's information YA has talked with Detective James Reddy of the City of Coral Springs Police Department who related that Ricky Whitehead and members of his family are currently subject of a narcotics investigation being conducted by

Reddy and that Whitehead is believed by Reddy, based on information acquired by Reddy during the course of his investigation, to be part of a large scale drug operation extending from South to Central Florida and possibly into Texas.

Additionally YA has confirmed through criminal records checks that Ricky Whitehead was arrested in January, 1984 in Tamarac, Broward County, Florida for felony possession of Cannabis and ultimately placed on probation for said offense.

WHEREFORE, it is prayed that a search warrant issue.

_____
AFFIANT

Sworn to and subscribed before me this 14th day of November, 1985.

_____
JUDGE

The above application for search warrant coming on to be heard and having examined the applicant under oath and the above sworn affidavit set forth and other facts and thereupon being satisfied that there is probable cause to believe that the grounds set forth in said application and facts do exist and that the law is being violated as alleged, I so find, and a search warrant is hereby allowed and issued.

_____

JUDGE

IN THE CIRCUIT COURT OF
THE EIGHTH JUDICIAL
CIRCUIT, IN AND FOR
ALACHUA COUNTY, FLORIDA

STATE OF FLORIDA

vs. SEARCH WARRANT

RICKY WHITEHEAD

IN THE NAME OF THE STATE OF FLORIDA.

TO ALL AND SINGULAR, THE SHERIFF AND DEPUTY SHERIFF'S OF ALACHUA COUNTY, FLORIDA.

WHEREAS, complaint on oath and in writing, supported by affidavit has been made before the undersigned Judge of Alachua County, Florida, And Whereas said facts made known to me have caused me to certify and find that there is probable cause to believe that the laws of the State of Florida have been and are being violated on and in the premises known and described as follows:

A one story house of concrete block construction, white in color located at 3224 Northwest 48th Place, Gainesville, Alachua County, Florida. At one end of this house is an open carport adjacent to an open front porch with a greenish colored wood front. A photocopy of two (2) photographs are attached to this warrant and incorporated herein as part of this description as exhibit 1. To reach this house start the intersection of northwest 39th avenue and northwest 34th street, Gainesville, Alachua County, Florida. From this intersection proceed north on northwest 34th street approximately five tenth (.5) of one mile to the intersection of northwest 34th street and northwest 46th avenue. Turn east onto northwest 46 avenue

approximately one tenth (.1) of one mile to the intersection of northwest 46th avenue and northwest 33rd terrace. Turn north onto northwest 33rd terrace approximate.y two tenths (.2) of one mile. At this point northwest 33rd terrace will curve to the right (east) and turn into northwest 48th place. The aforementioned house is located on the north side of this curve and located at 3224 northwest 48th place, Gainesville, Alachua County, Florida.

In the County of Alachua, State of Florida and being the premises of RICKY WHITEHEAD by having cocaine and cannabis, controlled substance in violation of Chapter 893, Florida Statutes as well as drug paraphernalia such as scales and baggies in violation of Chapter 893, Florida Statutes. Also an automatic firearm, approximately twenty four inches in length, blue steel designed to hold a clip in violation of Chapter 790.221, Florida Statutes.

NOW, THEREFORE you or either of you with such lawful assistance as may be necessary, are hereby commanded, in the day time or in the night time, to enter the said premises and the curtilage thereof to include any vehicle on said premises and curtilage and any person on said premises or curtilage believed to be engaged in or connected with violations of the above Statute and then and there to search diligently for said property described in this warrant, and if the same or any part thereof be found on said premises, you are hereby authorized to seize and secure the same and to make return of your doings under this warrant to the undersigned within ten days from the date hereof, and you are likewise commanded in the event you seize or take the property or materials mentioned in this warrant to safely keep the same until otherwise ordered by a court

having jurisdiction thereof, and that you give proper receipt for said property and deliver a copy of this warrant to the person from whom taken or in whose possession it is found or in the absence of any such person to leave said copy in the place where said property or material was found, and you are further directed to bring said property so found and also the bodies of the person or persons in possession thereof before the Court having jurisdiction of this offense to be disposed of according to law, and any person arrested in connection therewith.

WITNESS, my hand and official seal this 14th day of November, 1985.

_____

CIRCUIT JUDGE

Received November 14, 1985.

And returned this _____ day of November, A.D., 1985.

Served by making search as within directed; upon which search I found:

Exhibit # 223-1: A two dollar bill, United States currency, serial F00540538. Located on top of the nightstand in the Northeast bedroom by Investigator Larry Kirkpatrick.

Exhibit # 223-2: Suspected cocaine residue. Located on exhibit #223-1. Valtox test by Investigator Kirkpatrick proved positive for cocaine.

Exhibit # 223-3: A term paper with the name of Rick Whitehead on same. Located on top of the nightstand in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-4: Boyd Anderson High School picture identification card of Rick Whitehead. Located on top of the dresser in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-5: On OHAUS triple beam scale. Located on top of the dresser in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-6: A marijuana bong water pipe. Located on top of the dresser in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-7: Nine (9), one dollar bills, United States currency. Located in

the top left drawer of the dresser in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-8: A cocaine screen grinder containing suspected cocaine residue. Located in the top left drawer of the dresser in the Northeast bedroom by Investigator Kirkpatrick.

I, the undersigned officer by whom the warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on said warrant.

_____
OFFICER MAKING SEARCH

_____
Witness

_____
Witness

Sworn to and subscribed
before me this _____
day of _____,

_____
Notary Public
State of Florida

Received November 14, 1985.

And returned this _____ day of November, A.D., 1985.

Served by making search as within directed; upon which search I found:

Exhibit # 223-9: A plastic, zip-loc bag containing suspected cannabis weighing approximately thirty four (34) grams. Located in the top left drawer of the dresser in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-10: A suspected silencer, black in color. Located in the second drawer from the top, left side, of the dresser in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-11: A black t-shirt. This item was wrapped around exhibit #223-10.

Exhibit # 223-12: A plastic, zip-loc bag containing suspected cocaine weighing approximately 3.7 ounces. Located in the second drawer from the top, left side of the dresser in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-13: One (1) suspected Tuinal capsule, red/blue in color. Located in the second drawer from the top, left side, of the dresser in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-14: A Dan Wesson, stainless steel, .44 magnum revolver, serial #SB007654. Located in the third drawer from the top, left side, of the dresser in

the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-15: A nylon holster, black in color which contained exhibit #223-14.

I, the undersigned officer by whom the warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on said warrant.

_____
OFFICER MAKING SEARCH

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Witness

_____
Witness

Sworn to and subscribed before me this _____ day of _____,

_____
Notary Public
State of Florida

Received November 14, 1985.

And returned this _____ day of November, A.D., 1985.

Served by making search as within directed; upon which search I found:

Exhibit # 223-16: A business card containing the name of Rick Whitehead and the name La Bonita Parrots Imported. Located in the bottom drawer, left side, of the dresser in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-17: A small, black notebook containing names and phone numbers. Located in the bottom drawer, left side, of the dresser in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-18: A dresser drawer, constructed of wood. This is the top drawer, right side of the dresser in the Northeast bedroom. Located by Investigator Kirkpatrick.

Exhibit # 223-19: Approximately 3½ pounds of suspected Cannabis. Located in exhibit #223-18, by Investigator Kirkpatrick.

Exhibit # 223-20: An Interdynamics, K.G.9 pistol, 9mm, serial #02754. Located in the second drawer from the top, right side, of the dresser in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-21: A plastic, zip-loc bag containing approximately 339.6 grams of suspected Cannabis. Located on the floor next to the dresser in the Northeast

bedroom by Investigator Kirkpatrick.

Exhibit # 223-22: A Uzi carbine, 9mm, serial # SA45925. Located on the shelf in the closet of the Northeast bedroom by Investigator Kirkpatrick.

I, the undersigned officer by whom the warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on said warrant.

_____
OFFICER MAKING SEARCH

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Witness

_____
Witness

Sworn to and subscribed before me this _____ day of _____,

_____
Notary Public
State of Florida

Received November 14, 1985.

And returned this _____ day of November,

A.D., 1985.

Served by making search as within directed;

upon which search I found:

Exhibit # 223-23: A Colt, AR-15, .223 caliber, assault rifle, serial # SP38750 containing a loaded magazine. Located on the floor of the closet in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-24: A Remington, 30-06, model 760, serial # 508943. Located on the floor of the closet in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-25: A nylon, mustard colored gun case containing exhibit #223-24.

Exhibit # 223-26: A Remington, 30-06, Model 742, serial #A7445301 with a scope. Located on the floor of the closet in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-27: A Remington, pump shotgun, 20 gauge, Model 870, serial # S976858X. Located against the Southwest wall in the Northeast bedroom by Investigator Kirkpatrick.

Exhibit # 223-28: A brown, vinyl, zippered gun case which contained exhibit #223-27.

Exhibit # 223-29: A nylon suitcase, maroon with grey trim, containing suspected Cannabis residue. Located in the closet, on the floor, of the Northeast bedroom by

Investigator Dominick Pape. Valtox test proved positive for Cannabis. Test conducted by Investigator Larry Roberts.

I, the undersigned officer by whom the warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on said warrant.

_____
OFFICER MAKING SEARCH

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Witness

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Witness

Sworn to and subscribed
before me this _____
day of _____,

_____
Notary Public
State of Florida

Received November 14, 1985.

And returned this _____ day of November, A.D., 1985.

Served by making search as within directed; upon which search I found:

Exhibit # 223-30: Twelve dollars, United States Currency, consisting of a ten dollar bill and two (2) on dollar bills. Located on the floor in the closet of the Northwest bedroom by Investigator Kirkpatrick.

Exhibit # 223-31: A plastic, zip-lock bag containing approximately 34.6 grams of suspected Cannabis. This bag contains residue collected by Investigator Roberts from the top of the dresser in the Northeast bedroom.

Exhibit # 223-32: Nine (9) large, plastic, garbage bags. Located in the closet, on the floor, of the Northeast bedroom by Investigator Roberts.

Exhibit # 223-33: A glass, cocaine, free-base pipe. Located in a brown paper bag on the floor of a closet in the hallway by Investigator David Huckstep.

I, the undersigned officer by whom the warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on said warrant.

_____
OFFICER MAKING SEARCH

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Witness

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Witness

Sworn to and subscribed
before me this _____
day of _____,

_____
Notary Public
State of Florida